

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

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SOUTHWESTERN PUBLIC  
SERVICE COMPANY,

Petitioner,

v.

No. 10-CV-755 WJ/LFG

BURLINGTON NORTHERN  
SANTA FE RAILWAY COMPANY  
and SOUTHWESTERN RAILROAD  
COMPANY, INC.,

Respondents.

**ORDER DENYING MOTION FOR IMMEDIATE POSSESSION**

THIS MATTER comes before the Court on Southwestern Public Service (“SPS”) Company’s Motion for Immediate Possession (Doc. 14), filed September 16, 2010. The motion requests that this Court grant SPS immediate possession of the property in question. The Court had previously scheduled a hearing on this motion (Doc. 45), but the parties moved to vacate it (Doc. 46), and later moved for a 90-day stay of the case (Doc. 76). The stay was granted (Doc. 77) to allow the parties to reach an agreement on the issues presented in the Petition for Condemnation. Parties have again moved for another 90-day stay, representing that the parties have made progress on their negotiations and are currently working to address the outstanding issues (Doc. 79).

In light of the foregoing, the instant motion will be denied without prejudice. The motion has been pending since September 16, 2010 and the matter of immediate possession is clearly no longer as urgent as SPS initially represented in the motion. *See, e.g.*, Doc. 14 at 2-3.

Furthermore, the briefing in connection with this motion raises issues, such as automatic or express preemption, that have already been addressed in the Memorandum Opinion and Order

denying Respondents' motion to dismiss (Doc. 54). In other words, it appears to the Court that large sections, if not all, of the briefing are moot and do not raise matters that the Court will need to rule on to resolve this case. The motion will therefore be denied without prejudice. In the event that the parties are unable to reach a settlement, Petitioner may refile the motion and Respondents may respond without reference to any issues that are moot.

**THEREFORE, IT IS ORDERED** that Southwestern Public Service Company's Motion for Immediate Possession (Doc. 14) is hereby **DENIED WITHOUT PREJUDICE**.

  
UNITED STATES DISTRICT JUDGE